

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 7, 2018**

Sheila T. Reiff  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2017AP905-CR**

**Cir. Ct. No. 2016CF230**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MATTHEW F. SUMMERVILLE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Winnebago County: BARBARA H. KEY, Judge. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Matthew F. Summerville appeals from his judgment of conviction, arguing the circuit court erred in denying his motion to suppress evidence. Specifically, Summerville contends warrants to search his home and his mother's home, the searches of which resulted in the discovery of evidence ultimately leading to his conviction, lacked probable cause to justify the searches. We disagree.

### ***Background***

¶2 On April 19, 2016, an investigator for the Lake Winnebago Area Metropolitan Enforcement Group Drug Unit applied for and received a warrant to search Summerville's home at 502 East Custer Ave., City of Oshkosh. The investigator's affidavit in support of the warrant sought to search the premises for "[m]arijuana, and/or other controlled substances," as well as drug paraphernalia and specified items that could constitute evidence of the possession, sale, or delivery of drugs. "[F]acts tending to establish the ground for issuing a search warrant" included that on April 1, 2016, the investigator spoke with "an anonymous source of information known to law enforcement," who stated that:

(1) Summerville "is a large quantity marijuana dealer."

(2) Summerville "utilizes his home address of 502 E. Custer Ave., [in the City of Oshkosh,] as well as his mother's address of 728 Evans St., in the City of Oshkosh."

(3) He [the informant] "believed that Summerville stored quantities of marijuana and marijuana proceeds at the Evans St. address."

(4) “[O]n more than 1 occasion [the informant] has seen large totes of marijuana in Summerville’s home on Custer Ave.,” which totes the informant estimated “contain up to 10 pounds of marijuana each.”

The investigator further averred that he found “in-house police records” listing 502 E. Custer Ave. as Summerville’s address and 728 Evans St. as a previous address for him.

¶3 The investigator additionally averred that on April 13, 2016, a specifically named City of Oshkosh police officer removed the trash from the “garbage can that was on the front terrace area on the side of 502 E. Custer Ave.” and in that trash “located a burnt marijuana blunt and a cigarillo cigar wrapper,” as well as “paper documents for Matthew F. Summerville” and “a piece of mail for 502 E. Custer Ave.” A field test of the blunt provided a positive indication for THC. The investigator averred that, based on his training and experience, he “knows that cigarillo cigars are commonly used for smoking marijuana.” The investigator averred that the officer also located “a bag with two prescriptions for Matthew Summerville utilizing the address 728 Evans St., City of Oshkosh.”

¶4 On April 20, 2016, the investigator applied for and received a warrant to search 728 Evans St., City of Oshkosh. The investigator’s affidavit in support of this warrant also sought to search this premises for “[m]arijuana, and/or other controlled substances,” as well as drug paraphernalia and specified items that could constitute evidence of the possession, sale, or delivery of drugs. “[F]acts tending to establish the ground for issuing a search warrant” included all the same averments of the affidavit related to 502 E. Custer Ave., but also included additional averments.

¶5 The investigator additionally averred that on April 20, 2016, he and two other officers removed the trash from the garbage container “in the terrace area immediately in front of 728 Evans St.” In searching that trash, the officers located a shipping box “with the address 728 Evans St., Oshkosh ... on it,” “a clear plastic bag containing .1 grams of a green leafy substance” that tested positive for THC, and “a clear plastic vacuum sealer bag piece that had trace amounts of a green leafy substance on it.” In a separate trash bag, they also “located trace amounts of a green leafy substance” that tested positive for THC. An officer also located a receipt dated April 7, 2016, “with the name Matt Summerville and the address 502 East Custer Ave, Oshkosh ... on it.” One of the officers “also located 4 cigarillo packages and a small portion of a burnt cigarillo with the odor of burnt marijuana coming from it.”

¶6 Pursuant to the warrants, the residences at both 502 E. Custer Ave. and 728 Evans St. were searched and drugs, drug paraphernalia, and large sums of money were located. Summerville was charged with multiple drug-related counts. He moved to suppress the evidence on the basis that the warrants were not supported by probable cause because they were based upon an insufficiently corroborated anonymous tip. The circuit court denied the motion. Summerville ultimately pled to one felony count of possession of THC with intent to deliver and was sentenced. He appeals the judgment of conviction, contending the circuit court erred in denying his motion to suppress evidence.

### ***Discussion***

¶7 As our supreme court has stated:

In deciding whether probable cause exists for the issuance of a search warrant, the reviewing court examines the totality of the circumstances presented to the warrant-

issuing [judge] to determine whether [he or she] had a substantial basis for concluding that there was a fair probability that a search of the specified premises would uncover evidence of wrongdoing.

*State v. Romero*, 2009 WI 32, ¶3, 317 Wis. 2d 12, 765 N.W.2d 756. We “accord[] great deference to the warrant-issuing judge’s determination of probable cause, and that determination will stand unless the defendant establishes that the facts are clearly insufficient to support a finding of probable cause.” *See id.*, ¶18. Summerville fails to carry this burden.

¶8 When an application for a search warrant is dependent upon a hearsay declarant, as with the “anonymous source”<sup>1</sup> who provided information to the investigator in this case, a court must consider the declarant’s veracity and basis of knowledge. *See id.*, ¶20.

The veracity of a hearsay declarant and the basis of the declarant’s knowledge are “highly relevant in determining the value of his report” but “these elements should [not] be understood as entirely separate and independent requirements to be rigidly exacted in every case.” *Illinois v. Gates*, 462 U.S. 213, 230, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). These elements should instead “be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is ‘probable cause’ to believe that contraband or evidence is located in a particular place.” *Illinois v. Gates*, 462 U.S. at 230, 103 S.Ct. 2317.

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<sup>1</sup> In his affidavits, the investigator avers that he “spoke to an anonymous source of information known to law enforcement.” This language is anything but a model of clarity. From this language it may be that the “source” was known to law enforcement; however, if that was the case, the “source” really would not be “anonymous.” On the other hand, it is possible the source was truly anonymous—and the person’s identity not known to law enforcement. It may be that the investigator was attempting to state that this truly anonymous source was the source of “information known to law enforcement.” In its denial of Summerville’s suppression motion, the circuit court found that the “source” was “anonymous.” Because this interpretation of the affidavits is more favorable to Summerville, for purposes of this decision, we assume without deciding that this is the correct interpretation.

To demonstrate a declarant's veracity, facts must be brought to the warrant-issuing officer's attention to enable the officer to evaluate either the credibility of the declarant or the reliability of the particular information furnished. A declarant's credibility is commonly established on the basis of the declarant's past performance of supplying information to law enforcement. Even if a declarant's credibility cannot be established, the facts still may permit the warrant-issuing officer to infer that the declarant has supplied reliable information on a particular occasion. The reliability of the information may be shown by corroboration of details; this corroboration may be sufficient to support a search warrant. If a declarant is shown to be right about some things, it may be inferred that he is probably right about other facts alleged.

To demonstrate the basis of a declarant's knowledge, facts must be revealed to the warrant-issuing officer to permit the officer to reach a judgment whether the declarant had a basis for his or her allegations that evidence of a crime would be found at a certain place. The basis of a declarant's knowledge is most directly shown by an explanation of how the declarant came by his or her information. The basis of a declarant's knowledge also may be shown indirectly. The wealth of detail communicated by a declarant, for example, may be sufficient to permit an inference that the basis of the declarant's knowledge is sound.

**Romero**, 317 Wis. 2d 12, ¶¶20-22 (footnotes omitted).

¶9 Here, the warrant-issuing judge had “a substantial basis for concluding that there was a fair probability that a search of [Summerville's house and his mother's house] would uncover evidence of wrongdoing.” *See id.*, ¶3. In the affidavit for the warrant to search Summerville's residence, the investigator averred that around April 1, 2016, the anonymous source he spoke with informed him that Summerville “is a large quantity marijuana dealer”; “utilizes his home address of 502 E. Custer Ave., as well as his mother's address of 728 Evans St.”; “believed that Summerville stored quantities of marijuana and marijuana proceeds at the Evans St. address”; and that the informant “on more than 1 occasion ... has

seen large totes of marijuana in Summerville's home on Custer Ave.," which totes the informant estimated each contained "up to 10 pounds of marijuana." From police records, the investigator confirmed that 502 E. Custer Ave. was Summerville's address and that 728 Evans St. was a previous address for him. On April 13, 2016, police "located a burnt marijuana blunt and a cigarillo cigar wrapper" from trash removed from the garbage can for 502 East Custer Ave., as well as documents for Summerville. The blunt tested positive for THC, and the investigator averred that, based on his training and experience, he "knows that cigarillo cigars are commonly used for smoking marijuana." The investigator also averred that the trash search at this address produced "paper documents for Matthew F. Summerville" and "a bag with two prescriptions for Matthew Summerville utilizing the address 728 Evans St."

¶10 The warrant-issuing judge did not err in relying on the information provided by the anonymous source in that the information was substantially corroborated by various pieces of evidence discovered in Summerville's garbage. The source indicated Summerville utilizes both 502 East Custer Ave. and 728 Evans St. for dealing marijuana. Significantly, law enforcement found marijuana evidence in the trash for Summerville's home at 502 East Custer Ave. Furthermore, in addition to the investigator confirming through police records that Summerville's address was 502 East Custer Ave. and that 728 Evans St. was a previous address for him, law enforcement discovered in Summerville's garbage at 502 East Custer Ave. evidence that connected him to both addresses. While the evidence connecting Summerville to both addresses could be considered corroboration of mere "innocent details," corroboration of such details does add weight to the reliability of an anonymous informant's information because "an informant [who] is right about some things, ... is more probably right about other

facts.” See *State v. Hillary*, 2017 WI App 67, ¶19, 378 Wis. 2d 267, 903 N.W.2d 311 (citations omitted).

¶11 Furthermore, the source informed the investigator that “on more than 1 occasion [the informant] has seen large totes of marijuana in Summerville’s home on Custer Ave.,” which totes the informant estimated “contain up to 10 pounds of marijuana each.” This is very specific detail that gives the information the “ring of truth.” “One would not expect a tipster to provide such detail unless it had a basis in fact.” *Id.*, ¶15; see also *Romero*, 317 Wis. 2d 12, ¶22. Additionally, with this information, the source “necessarily claimed eyewitness knowledge” of the presence of marijuana at this location, and such knowledge “lends significant support to the tip’s reliability.” See *Navarette v. California*, 134 S. Ct. 1683, 1689 (2014). The judge who issued the warrant to search Summerville’s home at 502 East Custer Ave. reasonably relied upon the information in the investigator’s affidavit, and with such reliance had “a substantial basis for concluding that there was a fair probability that a search of [this residence] would uncover evidence of wrongdoing,” see *Romero*, 317 Wis. 2d 12, ¶3, specifically, at a minimum, the possession of marijuana, and quite likely also evidence of substantial drug dealing.

¶12 The warrant-issuing judge also had a substantial basis for authorizing the search of the premises at 728 Evans St. In addition to including all the information contained in the investigator’s affidavit for 502 East Custer Ave., the affidavit for the search warrant application for 728 Evans St. also indicated that on April 20, 2016, the investigator and two other officers searched the trash for 728 Evans St. and located therein at least two separate bags with “a green leafy substance” that tested positive for THC, as well as “4 cigarillo packages and a small portion of a burnt cigarillo with the odor of burnt marijuana coming from

it.” A receipt dated April 7, 2016, “with the name Matt Summerville and the address 502 East Custer Ave. ... on it” was also located in the trash.

¶13 Thus, the trash at the 728 Evans St. address again connected Summerville to that address and corroborated the source’s information indicating marijuana would likely be found inside that residence. As to the warrant to search the 728 Evans St. residence, the judge who issued the warrant again reasonably relied upon the information in the investigator’s affidavit, and with such reliance had “a substantial basis for concluding that there was a fair probability that a search of [this residence] would uncover evidence of wrongdoing,” *see id.*, ¶3, specifically, at a minimum, the possession of marijuana, and quite likely also evidence of substantial drug dealing.

¶14 For the foregoing reasons, we conclude the search warrants were properly issued upon probable cause, and we affirm.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

